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PROSECUTORS AND DEFENDERS INCENTIVE ACT OF 2005

Mr. DURBIN. Mr. President, I rise today to introduce the Prosecutors and Defenders Incentive Act of 2005. I am honored to have the support and cosponsorship of Senator DeWine with whom I have enjoyed working on similar measures in previous Congresses. I am further pleased that Senators Specter, Leahy, Kennedy, Feingold, Feinstein, Akaka, Cantwell, Harkin, Lautenberg, and Pryor have also agreed to join me as original cosponsors of this legislation. Our bill is designed to encourage the best and the brightest law school graduates to enter public service as criminal prosecutors and public defenders by making a loan repayment program available to them.

I am pleased that this legislation enjoys bipartisan support. I am anxious to work closely with Chairman Specter and Ranking Member Leahy to advance it through the Judiciary Committee and secure its enactment by the full Senate.

Our proposed loan repayment program is supported by the American Bar Association, the National District Attorneys Association, the National Association of Prosecutor Coordinators, the National Legal Aid and Defender Association, and the American Council of Chief Defenders.

We can - and should - do more to help prosecutor and public defender offices compete with the higher salaries available in the private sector. In many instances, despite high aspirations and strong motivation to work in the public sector, many graduates find it economically impossible to pursue that career path due to the overwhelming burden of debt. The availability of student loan repayment can be a powerful incentive for attracting some of our most talented new lawyers to public service employment.

Many of today's law graduates are finishing law school owing staggering amounts of student loan debt. According to the American Bar Association, for the Class of 2004, the median total cumulative educational debt for law school graduates was \$97,763 for private schools and \$66,810 for public schools. Educational loan debts represent a serious financial obligation which must be repaid. A default on any loan triggers serious consequences. Moreover, the looming obligation can impact career choices for many new graduates.

Many budding prosecutors and public defenders face a disheartening dilemma. On the one hand, they have a deep commitment to pursuing a career in public service. On the other hand, they need a level of income to meet the demands of exorbitant educational loan liabilities. This wrenching choice has not only personal impact but adverse implications for the legal profession and its commitment to ensuring access to justice for all citizens. And from an employer's perspective, comparatively low salaries and high debt make it extremely difficult to recruit and retain attorneys in prosecutor and public defender offices.

The results of a special study, "Lifting the Burden: Law Student Debt as a Barrier to Public Service," published in August 2003 by the American Bar Association reflects eight key findings,

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which I will describe in more specificity in my remarks.

First, law school tuition levels have skyrocketed. Second, the vast majority of law students borrow funds to finance their legal education. Third, law students are borrowing increasingly larger sums to finance their legal education. Fourth, public service salaries have not kept pace with rising law school debt burdens or private sector salaries. Fifth, high student debt bars many law graduates from pursuing public service careers. Sixth, many law graduates who take public service legal jobs must leave after they gain two to three years of experience. Seventh, public service employers report serious difficulty recruiting and retaining lawyers. And eighth, the legal profession and society pay a severe price when law graduates are shut out from pursuing public service legal careers due to high educational debt burden.

On the matter of skyrocketing tuition levels, since the early 1970's, there have been steep and persistent hikes in the costs of legal education and in the tuition rates law schools charge. Researchers found that tuition increased about 340 percent from 1985 to 2002 for private law school students and out-of-state students at public law schools. In-state students at public law schools saw their tuition jump about 500 percent. During the period 1992-2002, the cost of living in the United States rose 28 percent while the cost of tuition for public law schools rose 134 percent (for residents) and 100 percent (for non-residents) and private law school tuition increased 76 percent.

In 1975, when private law school tuition averaged \$2,525 and public law school tuition for in-State residents was \$700, the need to borrow to finance a legal education was not as prevalent or necessary. In 1990, when tuition was \$11,680 for private institutions and \$3,012 for public law schools, it was at least manageable. In 2002, the median law school annual tuitions were \$24,920 for private law schools, \$18,131 for non-resident students at public law schools and \$9,252 for resident students at public law schools.

A computation of the tuition rates of the 186 ABA-accredited law schools for 2004 reflects that charges for State residents at public law schools average \$10,820 per year. For non-resident attending public law schools, the average tuition amounts to \$20,176 per year. Students attending private law schools pay an average of \$25,603 per year.

Additional amounts for food, lodging, books, fees and personal expenses increase the costs for three years to more than \$60,000 in almost all cases and well over \$100,000 in many instances.

The vast majority of law students must borrow funds to finance their legal education. In 2002, almost 87 percent of law students borrowed to finance their legal education. That level remained consistent in 2004. Many of these students also carried unpaid debt from their

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undergraduate studies.

Law students are borrowing increasingly larger sums to finance their legal education. As tuition and other expenses of attending law school rose, more and more students found they needed to borrow to pay for law school. During the 1990's, the average amount students borrowed more than doubled. Today, the amount borrowed by many students exceeds \$80,000.

Public service salaries have not kept pace with rising law school debt burdens or private sector salaries. Entry-level salaries for government or other public service position have always been significantly lower than those in private practice.

Over the years since the mid-1970s, the median starting salaries in private practice have risen at a much faster pace than entry-level public service salaries. Between 1985 and 2002, the median starting salaries at private law firms rose by about 280 percent. Government lawyers, such as prosecutors and public defenders, saw their salaries increase by just 70 percent.

According to the 2004 *Public Sector and Public Interest Attorney Salary Report*, published in August 2004 by the National Association for Law Placement, Inc. (NALP), the median entry-level salary for public defenders is \$39,000; with 11-15 years of experience the median is \$65,000. The salary progression for state and local prosecuting attorneys is similar, starting at about \$40,000 and progressing to \$68,000-69,000 for those with 11-15 years of experience.

In August 2004, NALP also released the results of its tenth annual comprehensive survey of associate compensation in private sector law firms. According to the 2004 *Associate Salary Survey* report, based on salary information as of April 1, 2004 provided by 599 offices, the median salary for first-year associates ranged from \$65,000 in firms of 2-25 attorneys to \$120,000 in firms of 500 attorneys or more, with a first-year median for all participating firms of \$95,000. These figures evidence the stark reality of compensation differentials for those graduates electing to devote their skills to public service jobs as prosecutors and defenders.

High student debt bars many law graduates from pursuing public service careers. As law school tuition and student debt have sharply escalated, fewer and fewer law school graduates can afford to take the comparatively low-paying public service positions that are available in government agencies or with prosecutor, public defender or legal services offices.

A national study of law school debt conducted by Equal Justice Works, the Partnership for Public Service, and the National Association for Law Placement found that law student debt prevented two-thirds of law student respondents from considering a public service career.

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The report was based on a spring 2002 survey of graduating law students. Survey respondents included 1,622 students from 117 law schools representing 40 states, the District of Columbia, and Canada. Among the findings reported were the following: Overall, 66 percent of respondents stated that law school debt kept them from considering a public interest or government job. The percentage is higher among those who ultimately accepted jobs in small or large private firms, with 83 percent and 78 percent, respectively, stating that debt prevented them from seeking work with public interest organizations or the federal government.

Seventy-three percent of students who had not yet accepted a job when surveyed also indicated that they were disinclined to seek a public interest or government position due to heavy debt load. Providing \$6,000 a year in available loan repayment assistance would result in increased interest in a post-graduate federal government job for 83 percent of student respondents.

Many law graduates who take public service legal jobs must leave after they gain two to three years of experience. Despite their high debt burden, some law graduates initially accept public service jobs. However, the magnitude of debt precipitates high turnover because many of these cannot repay loan obligations on a median starting salary of \$36,000 and pay all their other remaining living expenses with the remaining \$1,100 per month. Some who begin careers in public service, and who would like to remain, leave after a few years when they find their debts are too severely constraining on their hopes for making ends meet, much less raising children or saving for retirement.

Many public service employers report having a difficult time attracting the best qualified law graduates. Public service employers, such as prosecutor or public defender offices, have vacancies they cannot fill because new law graduates cannot afford to work for them. Alternatively, those who do hire law graduates find that, because of educational debt payments, those whom they do hire leave just at the point when they have acquired the experience to provide the most valuable services.

The legal profession and society pay a severe price when law graduates are shut out from pursuing public service legal careers due to high educational debt burden. Lawyers with dreams of serving their communities as prosecutors or public defenders are unable to use their skills to do so. And when governments cannot hire new lawyers or keep experienced ones, the ability to protect the public safety is challenged. The inability of poor and moderate-income persons to obtain legal assistance can result in dire consequences to those individuals and the communities in which they live.

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Our bill, the Prosecutors and Defenders Incentive Act, is designed to help remedy some of these problems. Enacting this measure will help make legal careers in public service as prosecutors and public defenders in the criminal justice system more financially viable and attractive to law school graduates who have incurred significant financial obligations in acquiring their education.

Our proposal would establish, within the Department of Justice, a program of student loan repayment for borrowers who agree to remain employed, for at least three years, as public attorneys who are either State or local criminal prosecutors or State, local, or Federal public defenders in criminal cases. It would allow eligible attorneys to receive student loan debt repayments of up to \$10,000 per year, with a maximum aggregate over time of \$60,000.

Repayment benefits for such public attorneys would be made available on a first-come, first-served basis, and subject to the availability of appropriations. Priority would be given to borrowers who received repayment benefits for the preceding fiscal year and have completed less than three years of the first required service period. Borrowers could enter into an additional agreement, after the required three-year period, for a successive period of service which may be less than three years. It would cover student loans made, insured, or guaranteed under the Higher Education Act of 1965, including consolidation loans. Furthermore, it would extend to Federal public defenders the existing Perkins Loan forgiveness program available for Federal prosecutors.

Our bill is modeled on the program for Federal executive branch employees which has been enjoying growing success. Federal law permits Federal executive branch agencies to repay their employees' student loans, up to \$10,000 in a year, and up to a lifetime maximum of \$60,000. In exchange, the employee must agree to remain with the agency for at least three years.

During FY 2004, 28 executive branch agencies provided 2,945 Federal employees with more than \$16.4 million in student loan repayments, as reported by the Office of Personnel Management (OPM) in April 2005. This marked a 42 percent increase in the number of beneficiaries and a 79 percent increase in benefits over FY 2003.

It is noteworthy that across the Federal government in 2004, agencies used the loan repayment program most often to recruit and retain attorneys. In FY 2004, 473 federal lawyers received loan repayments, representing 16.1 percent of all employees who received the benefit.

The Securities and Exchange Commission provided the benefit to 239 lawyers, and the Justice Department distributed program benefits to 118 of its attorneys. According to OPM.'s report, the

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Nuclear Regulatory Commission reported that the program has been of tremendous benefit in recruiting and retaining attorneys in its Honors Law Graduate program. NRC commented that law school debt is continuing to rise – to more than \$100,000 in some cases – and a gap exists between Federal and private law firm salaries. As a result, some quality candidates may rule out a career as an attorney in the Federal Government. NRC believes the Federal student loan repayment program helps the Commission overcome these obstacles.

I recently received a compelling letter from Jennifer Walsh, the Assistant Appellate Defender for the State of Illinois. Her experiences portray in testamentary terms the real dilemmas encountered by perhaps thousands of attorneys desiring public service careers despite exorbitant student loan obligations.

To simply paraphrase Ms. Walsh's sentiments would diminish their impact, so I would like to quote some excerpts from her letter: "I love being a public servant. . . . Helping those who cannot afford to help themselves isn't charity and it isn't socially progressive. It is justice and it has made me a better person. . . . However, the one problem that I have consistently had since becoming a public defender is getting my student loans paid. I have a debt burden over \$110,000. . . . My student loan payments will soon exceed \$950 a month. This represents about one-third of my monthly take-home pay. I cannot help pay the mortgage on my house. I cannot save for my two children's futures. During a financial crisis, my husband knows that he cannot look to me to help the family finances. . . . I am now faced with a Hobson's choice – do I fulfill the needs of my indigent clients or my struggling family? I absolutely, positively don't want to leave. But my responsibilities to my family and my student loan creditors make staying in the public sector feel selfish and irresponsible. Imagine that – working for the public good seems selfish and irresponsible because I cannot do what I love and, at the same time, repay what I owe."

I appreciate Ms. Walsh's willingness to share her perspectives with me. By enacting and funding this legislation, we can take a meaningful step toward alleviating some of the financial burden for attorneys such as Ms. Walsh who choose careers as criminal prosecutors and public defenders.

I know there are many other law graduates who, like Jennifer Walsh, want to apply their legal training and develop their skills in the public sector, but are deterred by the weight of student loan obligations. Passage of our legislation will help them make their careers dreams a reality. I urge its swift adoption.

